

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SHEILA F. CRAAN,

Plaintiff,

- against -

AUSTRALIAN UNITED STATES  
SERVICES IN EDUCATION, INC.,

Defendant.

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**A P P E A R A N C E S :**

**For the Plaintiff:**

**Frank & Associates, P.C.**

500 Bi-County Boulevard, Suite 112N  
Farmingdale, New York 11735

By: Jennifer L. Mazzo, Esq.

Neil M. Frank, Esq.

**For the Defendant:**

**Sesti + Associates PC**

747 Third Avenue  
New York, New York 10017

By: Robert A. Sesti, Esq.

**HURLEY, Senior District Judge:**

***INTRODUCTION***

Plaintiff Sheila Craan (“Plaintiff”) brings this action pursuant to the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101 et seq. and the New York State Human Rights Law (“NYSHRL”), N.Y. Exec. Law § 296 et seq., alleging that defendant Australian United States Services in Education, Inc. (“Defendant”) unlawfully discriminated against her on the basis of disability when it terminated her employment. Defendant moves for summary judgment pursuant to Federal Rule of Civil Procedure (“FRCP”) 56. On December 7, 2007, the Court referred Defendant’s motion to Magistrate Judge E. Thomas Boyle for a Report

and Recommendation. On January 29, 2008, Judge Boyle issued a Report and Recommendation (the “Report”) that: (1) Defendant’s motion be granted with respect to Plaintiff’s ADA claim and; (2) the Court decline to exercise supplemental jurisdiction over Plaintiff’s remaining NYSHRL cause of action. Both parties have filed timely objections. For the reasons stated below, the Court adopts the Report in its entirety.

## ***DISCUSSION***

### **I.     *Standard of Review***

FRCP 72(b) provides that when a magistrate judge issues a report and recommendation on a matter “dispositive of a claim or defense of a party,” the district court judge shall make a de novo determination of any portion of the magistrate judge’s disposition to which specific written objection has been made. Fed. R. Civ. P. 72(b). Accordingly, the Court applies de novo review to Defendants’ objections. *See id.*

### **II.    *The Report is Adopted***

In his Report, Judge Boyle recommended that Plaintiff’s ADA claim be dismissed due to Plaintiff’s failure to raise a genuine issue of material fact that Defendant was an “employer” subject to the ADA. In essence, Judge Boyle found that Defendant proffered evidence that it had not employed fifteen or more employees for each working day for twenty or more calendar weeks during either 2003 or 2004, the years Plaintiff worked for Defendant, *see* 42 U.S.C. § 12111(5)(A) (defining “employer”), and that Plaintiff failed to present rebuttal evidence sufficient to create a material question of fact on this issue. Having found that Plaintiff’s ADA claim failed as a matter of law, Judge Boyle further recommended that the Court decline to exercise supplemental jurisdiction over Plaintiff’s NYSHRL claim.

Defendant objects to that portion of the Report pertaining to the NYSHRL claim, arguing that based on judicial economy and the “close relationship” between Plaintiff’s federal and state claims, the Court should retain supplemental jurisdiction over Plaintiff’s state law claim. Plaintiff objects to the Report in its entirety, asserting that genuine issues of triable fact remain with regard to all of her claims.

Upon a de novo review of the record, the Court adopts Judge Boyle’s Report in its entirety. In doing so, the Court finds that: (1) Plaintiff has failed to raise a genuine issue of material fact with regard to Defendant’s status as an “employer” under the ADA; and (2) because resolving the state law claim “would entail resolving additional issues of fact,” viz. whether Plaintiff was disabled under the NYSHRL, this Court should decline to exercise supplemental jurisdiction over that claim. *See N.Y. Mercantile Exch., Inc. v. Intercontinental Exch., Inc.*, 497 F.3d 109, 119 (2d Cir. 2007).

### ***CONCLUSION***

The Court adopts Magistrate Judge Boyle’s January 29, 2008 Report and Recommendation in its entirety. Accordingly, Defendant’s motion for summary judgment (docket no. 14) is granted. Upon entry of judgment, the Clerk is directed to close this case.

**SO ORDERED.**

Dated: Central Islip, New York  
March 24, 2008

/s/  
Denis R. Hurley,  
United States District Judge